No. 11-1160

In the Supreme Court of the United States

FEDERAL T

QUESTIONS PRESENTED

PARTIES TO THE PROCEEDING

The petitioner is the Federal Trade Commission.

Respondents are Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., Phoebe North, Inc., HCA Inc., Palmyra Park Hospital, LLC,* and Hos-

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In the Supreme Court of the United States

No. 11-1160

FEDERAL TRADE COMMISSION, PETITIONER

v.

PHOEBE PUTNEY HEALTH SYSTEM, INC., ET AL.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS

STATUTORY PROVISIONS INVOLVED

Pertinent parts of the Clayton Act, 15 U.S.C. 12 *et seq.*, the Federal Trade Commission Act (FTC Act), 15 U.S.C. 41 *et seq.*, and Georgia's Hospital Authorities Law, Ga. Code Ann. §§ 31-7-70 *et seq.*, are reproduced in

strain a state or its officers or agents from activities directed by its legislature." *Id.* at 350-351. The Court concluded that the marketing scheme was exempt because the "state itself," by "exercis[ing] its legislative authority in making the regulation and in prescribing the conditions of its application," had "created the machinery for establishing the prorate program." *Id.* at 352.

Decisions of this Court since *Parker* have refined and clarified the state action doctrine to strike an appropriate balance between federalism values and our strong national policy favoring free-market competition. See *FTC* v. *Ticor Title Ins. Co.*, 504 U.S. 621, 632-637 (1992). The exemption from federal competition law extends only to conduct deemed to be "that of 'the State acting as a sovereign.'" *Hoover* v. *Ronwin*, 466 U.S. 558, 574 (1984) (quoting *Bates* v. *State Bar*, 433 U.S. 350, 360 (1977)). Thus, like the actions of a State's legislature, *Parker*, 317 U.S. at 350-351, "a decision of a state supreme court, acting legislatively rather than judicially, is exempt from Sherman Act liability as state action." *Hoover*, 466 U.S. at 568 (citing *Bates*, 433 U.S. at 360; *Goldfarb* v. *Virginia State Bar*, 421 U.S. 773, 790 (1975)); see *id.* at 568 n.17 (leaving open the question "whether the Governor of a State stands in the same position * * * for purposes of the state-action doctrine").

In appropriate circumstances, the state action doctrine may preclude the application of federal antitrust law not only to the state officials who devise the relevant

pursuant to state authorization." *Hoover*, 466 U.S. at 568 (footnote omitted). To prevail on a state action defense, such actors (including respondents) must show that their challenged conduct flows from a State's decision to forgo free-market competition in favor of other means of pursuing its public policy goals. Thus, in *California Retail Liquor Dealers Ass'n* v. *Midcal Aluminum, Inc.*

zoning ordinance satisfied the "clear articulation" requirement because "[t]he very purpose of zoning regulation is to displace unfettered business freedom in a manner that regularly has the effect of preventing normal acts of competition"). And the doctrine protects only conduct "in [the] particular field" where the State has articulated its intent to displace competition. *Southern Motor Carriers Rate Conference, Inc.* v. *United States*, 471 U.S. 48, 64 (1985).

The second criterion—that the anticompetitive conduct be "'actively supervised' by the State itself," *Midcal*, 445 U.S. at 105 (quoting *City of Lafayette* v. *Louisiana Power & Light Co.*, 435 U.S. 389, 410 (1978) (*Lafayette*) (opinion of Brennan, J.))—ensures that "the State has exercised sufficient independent judgment and control so that the details of the [challenged restraint] have been established as a product of deliberate state intervention." *Ticor*, 504 U.S. at 634. That requirement "prevent[s] the State from frustrating the national policy in favor of competition by casting a 'gauzy cloak of state involvement' over what is essentially private anticompetitive conduct." *Southern Motor Carriers*, 471 U.S. at 57 (quoting *Midcal*, 445 U.S. at 106). Where private conduct is at issue, "sole reliance on the requirement of clear articulation will not allow the regulatory flexibility that * * * States deem necessary," because "it cannot alone ensure * * * that *particular* anticompetitive conduct has been approved by the State." *Ticor*, 504 U.S. at 637 (emphasis added).

In *Hallie*, this Court held that the actions of municipalities, which "are not themselves sovereign," 471 U.S. at 38 (citing *Lafayette*, 435 U.S. at 412 (opinion of Brennan, J.)), are not categorically exempt from antitrust scrutiny as the actions of a state legislature are.

Rather, *Midcal*'s "clear articulation" requirement applies to the conduct of a municipality, but the "active supervision" requirement does not. That approach re-

at 372-373 (referring to “displacement of competition” and “suppression of competition”).

2. In 1941, Georgia amended its constitution to enable its political subdivisions to offer health-care services. See *DeJarnette* v. *Hospital Auth.*, 23 S.E.2d 716, 723 (Ga. 1942). The State contemporaneously enacted the Hospital Authorities Law, 1941 Ga. Laws 241 (Ga. Code Ann. §§ 31-7-70 *et seq.*), to “provide a mechanism for the operation and maintenance of needed health care facilities in the several counties and municipalities of th[e] state.” Ga. Code Ann. § 31-7-76(a); see *DeJarnette*, 23 S.E.2d at 723 (“The purpose of the constitutional provision and the statute based thereon was to authorize counties and municipalities to create an organization which could carry out and make more workable the duty which the State owed to its indigent sick.”) (citations omitted).[1]

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[1] Georgia’s legislation was part of a nationwide trend to expand
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The Hospital Authorities Law authorizes each county and municipality, and appropriate combinations of multiple counties or municipalities, to activate under state law "a public body corporate and politic to be known as the 'hospital authority.'" Ga. Code Ann. §§ 31-7-72(a) and (d). "Every hospital authority shall be deemed to exercise public and essential governmental functions," *id.* § 31-7-75, and each hospital authority possesses "any and all powers now or hereafter possessed by private corporations performing similar functions," *id.* § 31-7-75(21). Those corporate powers include, *inter alia*, the powers to "make and execute contracts"; to "acquire * * * and * * * operate projects"; to "lease for [up to 40 years] for operation by others any project"; to "establish rates and charges for the services and use of the facilities of the authority"; to "[transact in] any real or personal property"; to "contract for the management and operation of [a] project"; and to "form and operate * * * one or more networks of hospitals, physicians, and other health care providers." *Id.* § 31-7-75(3), (4), (7), (10), (14), (23) and (27); see *id.* § 31-7-71(5) (defining "project" to include a variety of facilities, including "office buildings, clinics, housing accommodations, nursing homes, rehabilitation centers," and other "health care facilities," as well as "hospitals").

Other provisions of the Hospital Authorities Law establish standards for the operation of an authority's projects that generally mirror those that apply to private nonprofit hospitals. "No authority shall operate or construct any project for profit." Ga. Code Ann. § 31-7-77. A hospital authority exercising its power to lease a project for operation by a private party must determine that doing so will "promote the public health needs of the community by making additional facilities

available in the community or by lowering the cost of health care in the community." *Id.* § 31-7-75(7). An authority leasing a project to others must also "retain[] sufficient control over any project so leased so as to ensure that the lessee will not in any event obtain more than a reasonable rate of return on its investment in the project." *Ibid.* Proceeds from the sale or lease of a hospital owned by a hospital authority must be held in "an irrevocable trust fund," to be "used exclusively for funding the provision of hospital care for the indigent residents of the [area]." *Id.* § 31-7-75.1(a). The statute exempts from disclosure under public-records laws "any potentially commercially valuable plan, proposal, or strategy that may be of competitive advantage in the operation of [an authority-chartered] corporation or [the] authority or its medical facilities." *Id.* § 31-7-75.2.

The statute also authorizes the creation of additional hospital authorities within large-population counties (those of 100,000 or more residents), Ga. Code Ann. § 31-7-73(a), and permits certain consolidations of hospital authorities within each such large-population county, *id.* § 31-7-72.1(a). The statute provides that, in exercising that consolidation power, "hospital authorities are acting pursuant to state policy and shall be immune from antitrust liability to the same degree and extent as enjoyed by the State of Georgia." *Id.* § 31-7-72.1(e).

3. a. Phoebe Putney Memorial Hospital (Memorial) has operated in the city of Albany, Georgia, since 1911. J.A. 38. Memorial has 443 beds and offers a full range of general acute-care hospital services, as well as emergency-care, tertiary-care, and outpatient services.

bany-Dougherty County (Authority). The Authority has held title to Memorial's assets since it acquired them in 1941, and it operated Memorial until 1990. Pet. App. 4a.

That year, the Authority formed two private corporations, respondent Phoebe Putney Health System, Inc. (PPHS) and a subsidiary, respondent Phoebe Putney Memorial Hospital, Inc. (PPMH). Pet. App. 4a. The Authority holds reversionary interests in the assets of both corporations. *Id.* at 4a n.4. The Authority ceded control of Memorial by leasing it to PPMH in a 40-year, dollar-a-year lease that, as extended, was scheduled to expire in 2042. J.A. 40, 67-119 (lease); see Pet. App. 19a. As a result, PPMH and PPHS have full economic, operational, and competitive control over Memorial, including "total control over the establishment of all rates and charges for services by the Hospital" during the period of the lease. J.A. 89; see J.A. 40-42. In the lease, the Authority also forswore any future competition with Memorial by agreeing not to "own, manage, operate or control or be connected in any [such] manner with * * * any hospital or other health care facility" (a condition PPMH has waived as part of the transaction at issue in this case). J.A. 94; see J.A. 41-42.

The Authority now has no budget, no staff, and no employees. J.A. 40. It has never countermanded, approved, modified, or otherwise affected PPMH's actions on matters such as setting rates, offering services, making staffing decisions, or managing facilities capacity. J.A. 41. As the Authority's Chairman acknowledged, in reaction to a new Authority board member's concerns about Memorial's high prices, "the Authority really has no authority as far as running the hospital." J.A. 135; see J.A. 31. The Authority likewise does not control or supervise PPHS. J.A. 40-42.

Palmyra Medical Center, which was incorporated as Palmyra Park Hospital, Inc. (Palmyra), is located two miles from Memorial and was built in 1971. Before the transaction at issue here, Palmyra was owned by respondent HCA Inc., one of the largest health-care service providers in the United States.[2] Palmyra has 248 beds and, like Memorial, provides general acute-care services. Memorial and Palmyra are the only two hospitals in Dougherty County. J.A. 29-30, 32-33, 39-40.

b. Respondents orchestrated a transaction through which PPHS was to acquire control of Palmyra from HCA, giving PPHS an absolute monopoly in the market for inpatient general acute-care hospital services sold to commercial health-care plans and their customers in Dougherty County. Even within a broader market that includes six counties surrounding Albany, the merger increases PPHS's market share (as measured by commercial patient discharges) from 75% to 86%, with the hospital possessing the next-largest market share (of only 4%) 40 miles from Albany. J.A. 29-30, 32-33, 54. By any reasonable measure, the acquisition is presumptively unlawful. See J.A. 52-54 (analyzing the transaction under the Horizontal Merger Guidelines developed by the U.S. Department of Justice and the FTC). In the courts below, respondents did not contest the anticompetitive effects of the transaction. Pet. App. 7a.

The transaction was structured using the Authority as a conduit. Under an integrated purchase-and-lease transaction, the Authority would act as a nominal purchaser of Palmyra's assets using PPHS-controlled funds. J.A. 44-45. The Authority would then lease Pal-

[2] In response to this Court's call for a response to the petition for a writ of certiorari, HCA and Palmyra informed the Clerk that they have no continuing interest in the outcome of this case.

time the Termination Fee Agreement was concluded, "neither the form of the Asset Purchase Agreement nor the transactions contemplated thereby ha[d] been presented to, or approved by, the Authority." J.A. 160; see J.A. 31, 47-48. On learning of that side agreement during the FTC's investigative hearing, the Authority's chairman stated that the agreement "was something between [PPHS] and HCA that I was unaware of, so what they do again is not the Authority. We're not in-

nating "the need for evaluation of the *Midcal* 'active state supervision' element for private parties," *id.* at 48a (quoting *Crosby* v. *Hospital Auth.*, 93 F.3d 1515, 1530 (11th Cir. 1996), cert. denied, 520 U.S. 1116 (1997)); see *id.* at 61a-64a.

6. The court of appeals affirmed. Pet. App. 1a-15a. The court "agree[d] with the [FTC] that, on the facts alleged, the joint operation of Memorial and Palmyra would substantially lessen competition or tend to create, if not create, a monopoly." *Id.* at 8a. Like the district court, it viewed "the purchase of Palmyra's assets, as well as their temporary management by, and subsequent lease to, PPHS * * * as parts of a single 'acquisition' under the Clayton Act." *Id.* at 10a n.11. The court concluded, however, that the state action doctrine exempted the transaction from antitrust scrutiny. *Id.* at 8a-14a.

a. The court of appeals stated that "[t]he requirement of a clearly articulated state policy" is satisfied if "anticompetitive conduct is a 'foreseeable result' of [state] legislation." Pet. App. 9a. The court observed that, under Eleventh Circuit precedent, a " 'foreseeable anticompetitive effect' need not be 'one that ordinarily occurs, routinely occurs, or is inherently likely to occur as a result of the empowering legislation.' " *Ibid.* (quoting *FTC* v. *Hospital Bd. of Dirs. of Lee Cnty.*, 38 F.3d 1184, 1188 (11th Cir. 1994) (*Lee County*)). Rather, the court explained, the state action doctrine applies if anticompetitive conduct is "reasonably anticipated." *Ibid.* (quoting *Lee County*, 38 F.3d at 1190-1191).

The court of appeals reasoned that, because "the Georgia legislature granted powers of impressive breadth to the hospital authorities"—including, "[m]ost important[ly] in this case," the powers to acquire and lease out hospitals—"the legislature must have antici-

pated that such acquisitions would produce anticompetitive effects. Foreseeably, acquisitions could consolidate ownership of competing hospitals, eliminating competition between them." Pet. App. 11a-12a. The court further stated that "[i]t defies imagination to suppose the [Georgia] legislature could have believed that every geographic market in Georgia was so replete with hospitals that authorizing acquisitions by the authorities could have no serious anticompetitive consequences." *Id.* at 13a.

b. The FTC also argued that the state action doctrine cannot shield a transaction, like the one at issue here, in which private actors engage in the unsupervised creation of a monopoly. See FTC C.A. Br. 25-36, 43-48. The court of appeals summarily rejected what it understood to be the FTC's "suggestion that * * * private influence, or * * * private benefit, somehow makes the transaction and its anticompetitive effects unforeseeable." Pet. App. 14a n.13. The court of appeals did not discuss *Midcal*'s active-supervision requirement.

7. On December 15, 2011, after issuing its decision on the merits, the court of appeals dissolved the injunction it had granted pending the FTC's appeal. Pet. App. 66a-67a (granting injunction); *id.* at 68a (dissolving injunction). The transaction closed that day. See Br. in Opp. 17; Jennifer Maddox Parks, *Hospitals to Merge with Phoebe*, Albany Herald, Dec. 15, 2011, at 1A. On July 25, 2012, the Authority approved an amended and fully restated lease, under which PPHS will control Memorial and Palmyra (now known as Phoebe North) under a single lease. See Jennifer Maddox Parks, *Hospital Authority Approves Lease*, Albany Herald, July 26, 2012, at 1A.

SUMMARY OF ARGUMENT

1. a. Although a State can authorize substate or private actors to engage in conduct that would otherwise violate federal antitrust law, the State's intent to take that step should not lightly be inferred. This Court's decisions require a "clearly articulated and affirmatively expressed" state policy "to displace competition" with an alternative regulatory structure. Those precedents make clear in particular that a broad, "neutral" conferral of powers that can readily be exercised in either procompetitive or anticompetitive ways cannot provide the requisite "clear articulation" of a state policy to displace competition. Rather, displacement of competition must be the "inherent" or "necessary" result of the State's alternative regulatory structure for ordering the relevant market. If the state regime can function properly and achieve its intended purposes without departing from the federal policy of free-market competition, then the State's intent to supersede federal competition law cannot properly be inferred.

b. Georgia's Hospital Authorities Law does not clearly articulate a state policy to displace competition in the provision of hospital services. The law grants local hospital authorities general corporate powers to function as market participants in the hospital-services market, including through the acquisition of hospitals and other health-care facilities, but it does not suggest a state intent to consolidate hospital ownership and displace competition. The powers the statute confers on local hospital authorities closely resemble those possessed by typical private corporations, which of course are subject to federal antitrust law. The Hospital Authorities Law is therefore the type of "neutral" law, con-

ferring powers that are readily susceptible of both procompetitive and anticompeti

a conduit, the transaction's ultimate effect is to create an unsupervised private monopoly. This Court's precedents make clear that, to shield the anticompetitive actions of private actors from the federal antitrust laws, a State must adopt some alternative regulatory mechanism that provides active state supervision of that conduct. Because no such program of active supervision exists here, Georgia could not exempt respondents from federal antitrust liability.

ARGUMENT

Based on Georgia's grant of general corporate powers to the Authority, the court of appeals held that a merger to monopoly among private parties was exempt from all antitrust scrutiny under the state action doctrine. The court's analysis is fundamentally flawed. Georgia's grant of general corporate powers cannot support a state action defense because it reflects "mere *neutrality*" regarding possible anticompetitive behavior, not an affirmative preference for consolidation of hospital ownership. *Community Commc'ns Co.* v. *City of Boulder*, 455 U.S. 40, 55 (1982) (*Boulder*). The effect of the integrated transaction at issue here, moreover, is to create an unsupervised private monopoly. Even if Georgia had clearly expressed its intention to exempt such private conduct from federal antitrust scrutiny, such a policy would violate the established rule that "a State may not confer antitrust immunity on private persons by feiat."

A. To Trigger The State Action Doctrine, State Law Must Clearly Articulate An Intent To Displace Competition Through A Public Policy Or Regulatory Structure That Necessarily And Inherently Is Incompatible With The Federal Policy Of Free-Market Competition

1. Through the federal antitrust laws, the "Magna Carta of free enterprise," Congress "sought to establish a regime of competition as the fundamental principle governing commerce in this country." *City of Lafayette* v. *Louisiana Power & Light Co.*, 435 U.S. 389, 398 & n.16 (1978) (citation omitted). Those "laws will not be displaced"—whether by Congress through implied repeal, or by a State through the implications of its regulatory structure—"unless it appears that the antitrust and

> that allows its municipalities to do as they please can hardly be said to have "contemplated" the specific anticompetitive actions for which municipal liability is sought.

Ibid. The Court further explained that "[a]cceptance of such a proposition—that the general grant of power to enact ordinances necessarily implies state authorization to enact specific anticompetitive ordinances—would wholly eviscerate the concepts of 'clear articulation and affirmative expression.'" *Id.* at 56.

The Court used similar reasoning in *Cantor*, where it held that the state action doctrine did not shield a state-regulated electrical utility's program of providing light bulbs without extra cost to its electricity customers. The Court explained that inclusion of the program on the utility's tariff filed with, and approved by, the Michigan Public Service Commission, 428 U.S. at 582-583, was not enough to attribute the utility's program to the State. No Michigan statutes regulated the light-bulb sales market, and neither the Michigan legislature nor the state Public Service Commission had ever passed on the desirability of the utility's program. Accordingly, the Court held that the Public Service Commission's approval did not "implement any statewide policy relating to light bulbs"; at most, "the State's policy [wa]s neutral on the question whether a utility should, or should not, have such a program." *Id.* at 585.

program," the Court rejected the utility's state action defense. *Id.* at 598.

actions constituted an illegal tying arrangement and an unlawful refusal to deal with the Towns." *Id.* at 37. The city raised a state action defense, relying on state statutes that authorized it both to regulate the boundaries of its service area and to refuse sewage services to unannexed areas. See *id.* at 40-41.

This Court held that the city's actions were not subject to federal competition law because the State had articulated a policy of allocating sewage services through governmental regulation and the politics of annexation, rather than through market forces. The Court attached particular weight to Wisconsin-law provisions that (a) granted cities that operate public utilities the power to "by ordinance fix the limits of such service in unincorporated areas," and (b) stated that "the municipal utility shall have no obligation to serve beyond the area so delineated." *Hallie*, 471 U.S. at 41 (quoting Wis. Stat. § 66.069(2)(c) (1981-1982)). Because these provi-

et seq., clearly articulated a state policy to displace competition with regulation. The statute required the State's Public Service Commission to "prescribe 'just and reasonable' rates for the intrastate transportation of general commodities" by common carrier. *Southern Motor Carriers*, 471 U.S. at 63 (citing Miss. Code Ann. § 77-7-221 (1973)). Such rates were to be determined "on the basis of statutorily enumerated factors," having "no discernible relationship to the prices that would be set by a perfectly efficient and unregulated market." *Id.* at 65 n.25 (citing Miss. Code Ann. § 77-7-221 (1973)). The Court explained that the clear articulation standard was met because the "Commission [wa]s not authorized to choose free-market competition," but was required instead to follow a statutorily prescribed and "inherently anticompetitive rate-setting process." *Id.* at 64, 65 n.25.

City of Columbia v. *Omni Outdoor Advertising, Inc.*, 499 U.S. 365, 373 (1991), involved another "necessarily" anticompetitive state regime. There, a city zoning ordinance regulating the erection of billboards had the effect of benefitting a company whose billboards were already in place, thereby hindering a new rival's ability to compete. *Id.* at 368. The Court concluded that the South Carolina statutes authorizing municipal zoning in general, and the challenged ordinance in particular (see *id.* at 370-371 & n.3), satisfied the "clear articulation" requirement of the state action doctrine. *Id.* at 370-373. The Court explained that "[t]he very purpose of zoning regulation is to displace unfettered business freedom in a manner that regularly has the effect of preventing normal acts of competition," and that "[a] municipal ordinance restricting the size, location, and spacing of bill-

boards * * * necessarily protects existing billboards against some competition from newcomers." *Id.* at 373.

A consistent principle underlies the contrasting outcomes of this line of cases. The clear articulation requirement of the state action doctrine is satisfied only when the challenged conduct is undertaken pursuant to a State's affirmatively expressed public policy or regulatory structure that "inherently," *Hallie*, 471 U.S. at 42; *Southern Motor Carriers*, 471 U.S. at 64, by "design[]," *Orrin W. Fox*, 439 U.S. at 109, or "necessarily," *Omni Outdoor*, 499 U.S. at 373, "displace[s] unfettered business freedom," *Midcal*, 445 U.S. at 106 n.9 (quoting *Orrin W. Fox*, 439 U.S. at 109). Enactment of such a law reflects the State's rejection, with respect to a particular field of endeavor, of federal law's background "assumption that competition is the best method of allocating resources." *National Soc'y of Prof'l Eng'rs* v. *United States*, 435 U.S. 679, 695 (1978). By contrast, a state action defense is not available if the State's purposes and objective can be realized, and its laws can "function effectively," *Cantor*, 428 U.S. at 598, without displacing free-market competition. In particular, a state action defense cannot be premised on a broad, general state-law grant of authority, since such a grant (though capable of anticompetitive uses) gives no indication that the State anticipated and condoned specific anticompetitive practices. See *Boulder*, 455 U.S. at 55.

B. The Relevant Georgia-Law Provisions Do Not Suggest, Let Alone Clearly Articulate, Any Legislative Intent To Displace Competition In The Provision Of Hospital Services

The court of appeals erred in applying the principles described above to the transaction at issue in this case.

In accepting respondents' state action defense, the court did not identify any Georgia law reflecting an intent to consolidate hospital ownership and displace competition.

private hospitals for patients. If an instrumentality of the government chooses to enter an area of business ordinarily carried on by private enterprise, i.e., engage in a function that is not "governmental,"

business freedom.' " *Hallie*, 471 U.S. at 42 (quoting *Orrin W. Fox*, 439 U.S. at 109).

tered business freedom.'" *Hallie*, 471 U.S. at 42 (quoting *Orrin W. Fox*, 439 U.S. at 109). To the contrary, the powers to acquire and lease out property are routinely exercised, by a broad range of commercial and noncommercial entities, in ways that are fully consistent with

place competition. In areas of the State served by a single hospital, the acquisition of that hospital by the local authority would not typically be anticompetitive, as it would not increase concentration. See 1A Areeda & Hovenkamp ¶ 224e, at 126 ("[S]ubstitution of one monopolist for another is not an antitrust violation."). And in an area served by many hospitals, a merger may not be anticompetitive if it does not "result[] in a significant increase in the concentration of firms in th[e] market." *Philadelphia Nat'l Bank*, 374 U.S. at 363; see U.S. Dep't of Justice & FTC, *Horizontal Merger Guidelines* §§ 5, 9, 10, at 15-19, 27-31 (2010) (discussing the relevance of market concentration, entry barriers, and efficiencies, respectively, to the potential for anticompetitive effects of mergers). It is in the intermediate case, where (as here) the number of hospitals serving a market is small but greater than one, that transfers of ownership raise the clearest competitive concerns. And even in that setting, a transfer will likely be problematic only if the purchaser of one hospital is already the owner of another. Nothing in the Hospital Authorities Law suggests that the Georgia legislature specifically contemplated that subset of mergers when it authorized hospital authorities to transact in property.

Like the power of an ordinary corporation to acquire property, the power of Georgia hospital authorities "[t]o acquire * * * projects," Ga. Code Ann. § 31-7-75(4), can be used both in ways that are anticompetitive and in ways that raise no antitrust concerns. Rather than evidencing the State's intent to displace federal competition law, the Georgia statute is more naturally understood to authorize such acquisitions subject to the same legal restrictions that bind a private company engaged in the same line of business. See 1A Areeda &

Hovenkamp ¶ 225a, at 131 ("When a [S]tate grants power to an inferior entity, it presumably grants the power to do the thing contemplated, but not to do so anticompetitively."); *id.* ¶ 225b4, at 28 (Supp. 2012) ("[A] more logical reading" of the Hospital Authorities Law "is that the statute gave the hospital districts the power to make acquisitions, provided that these acquisitions were not unlawful on other grounds.").[5] The preference for free-market competition set forth in the State's constitution (see pp. 28-29, *supra*) further undermines the court of appeals' inference that the Georgia legislature intended, through the conferral of general corporate powers, to grant an antitrust exemption that other corporations do not possess.

3. No other provision of the Hospital Authorities Law reflects a design to displace competition in the hospital-services market. To the contrary, several features of the statute suggest that the Georgia legislature expected and intended hospital authorities to face com-
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For example, the statute empowers local hospital authorities to "exercise any or all powers now or hereafter possessed by private corporations performing similar functions." Ga. Code Ann. § 31-7-75(21). That provision reflects the legislature's understanding that hospital authorities and private hospitals will provide services

tion in narrowly defined circumstances reflects the Georgia legislature's premise that local hospital authorities are otherwise subject to federal competition law. If the legislature had intended the Hospital Authorities Law to effect a general displacement of competition in the hospital-services market, the antitrust exemption in Section 31-7-72.1(e) would be superfluous. See, *e.g.*,

468 U.S. 85, 107 (1984). And because nonprofit entities are subject to federal antitrust restrictions (see pp. 46-47, ***infra***

C. The Decision Below Typifies A Recurring Misunderstanding Of The Role Of "Foreseeability" In The State Action Doctrine

The erroneous application of the state action doctrine by the court below is traceable in part to a recurring misunderstanding of this Court's prior use of the word "foreseeable" in connection with the state action doctrine. The Court should take the opportunity to address that misunderstanding to ensure that lower courts' application of the doctrine remains aligned with its justifications.

1. The Eleventh Circuit held in this case that the state action doctrine applies if "anticompetitive conduct is a 'foreseeable result' of the [State] legislation." Pet. App. 9a (quoting *Hallie*, 471 U.S. at 42). The court further explained that, under its circuit precedent, "a 'foreseeable anticompetitive effect' need not be 'one that ordinarily occurs, routinely occurs, or is inherently likely to occur as a result of the empowering legislation.' The clear-articulation standard 'require[s] only that the anticompetitive conduct be reasonably anticipated.' " *Ibid.* (brackets in original) (quoting *FTC* v. *Hospital Bd. of Dirs. of Lee Cnty.*, 38 F.3d 1184, 1188, 1190-1191 (11th Cir. 1994)); accord Pet. App. 44a-45a (district court opinion). The Eleventh Circuit has consistently found it "foreseeable" in this sense that ordinary corporate powers will be put to anticompetitive ends.[6]

[6] See Pet. App. 12a ("[I]n granting the power to acquire hospitals, the legislature must have anticipated that such acquisitions would produce anticompetitive effects."); *Bankers Ins. Co.* v. *Florida Residential Prop. & Cas. Joint Underwriting Ass'n*, 137 F.3d 1293, 1298 (1998) (finding it "foreseeable that conferring * * * discretion

If the word "foreseeable" is viewed in isolation, the court of appeals' approach reflects a literally plausible understanding of that term. Because anticompetitive behavior often furthers the economic and other interests of those who engage in it, it is foreseeable (in the sense that it can "reasonably [be] anticipated," Pet. App. 9a (citation omitted)) that broad, general grants of power will sometimes be used in anticompetitive ways. Cf. *United States* v. *Rockford Mem'l Corp.*, 898 F.2d 1278, 1285 (7th Cir.) (Posner, J.) ("Most people do not like to compete, and will seek ways of avoiding competition by agreement tacit or explicit."), cert. denied, 498 U.S. 920 (1990); 1 Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* 145 (R.H. Campbell et al., eds., 1979) ("People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the publick, or in some contrivance to raise prices.").

2. Although this Court has used the word "foreseeable" in describing the circumstances under which the

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as an allegedly anticompetitive refusal to contract with the plaintiff insurer for servicing);

state action doctrine applies, the Court's decisions reject the expansive view of that doctrine that the court below adopted. Applying "foreseeability" so broadly would fail to distinguish between, on the one hand, situations where the State has clearly articulated and affirmatively expressed a policy to displace competition (in which a state action defense may be available), and, on the other hand, situations where the State has legislated generally but has not sought to displace competition. The Court has used the word "foreseeable" to describe conduct that the State can safely be presumed to have contemplated and endorsed, as evidenced by the State's conferral of specific powers that are inherently inconsistent with pure free-market competition. That approach ensures that the state action doctrine serves its intended purpose of vindicating actual state policy choices, rather than creating exemptions for aberrant anticompetitive conduct in spheres where the State has evinced no intent to displace competition.

Thus, in rejecting the townships' argument in *Hallie* that the lack of an "express mention of anticompetitive conduct" in state law precluded the city's state action defense, this Court observed that the challenged municipal conduct wa

in *Hallie* had "specifically authorized Wisconsin cities to provide sewage services and ha[d] delegated to the cities the express authority to take action that foreseeably will result in anticompetitive effects. No reasonable argument can be made that these statutes are neutral in the same way that Colorado's Home Rule Amendment was." *Ibid.*

This Court in *Hallie* thus linked the foreseeabilty of the city's anticompetitive conduct to the *specificity* of the relevant state-law authorization, and the *inherently* anticompetitive nature of the authorized conduct. The anticompetitive conduct at issue in *Hallie* was foreseeable in the sense of being the natural and expected result of the relevant state-law authorization and not merely one theoretically possible use of the authority conferred. In reaching that conclusion, the Court rejected the townships' effort to equate the broad, general authorization involved in *Boulder* with state laws authorizing conduct that is inherently anticompetitive. The decision of the court below, which held that anticompetitive behavior is a "foreseeable" result of a legislative grant of general corporate powers, rests on the very analogy that the Court rejected in *Hallie*. See Pet. App. 9a ("[A] foreseeable anticompetitive effect need not be one that ordinarily occurs, routinely occurs, or is inherently likely to occur as a result of the empowering legislation.") (internal quotation marks and citation omitted).[7]

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[7] As leading commentators have explained:

> Sufficient state authorization comprises two elements. *First*, the state itself must have authorized the challenged activity in the state law sense of permitting the relevant actor to engage in it; *second*, it must have done so with an intent to displace the antitrust laws.

This Court in *Omni Outdoor* cited *Hallie* for the proposition that the "clear articulation" requirement of the state action doctrine is satisfied "if suppression of competition is the 'foreseeable result' of what the statute authorizes." 499 U.S. at 373 (quoting *Hallie*, 471 U.S. at 42). In holding that this requirement was satisfied, however, the Court explained that "[t]he very purpose of zoning regulation is to displace unfettered business freedom in a manner that regularly has the effect of preventing normal acts of competition." *Ibid.* As in *Hallie*, the Court thus linked the foreseeability of anticompetitive effects to the relevant state law's specific focus on a form of regulation (zoning) that inherently displaces pure free-market competition.

3. "Foreseeability" can thus be an appropriate tool for discerning the State's intent to displace competition, which is the ultimate question under the state action doctrine. When a State authorizes the specific conduct that is challenged in a federal antitrust suit, and that type of conduct is inherently anticompetitive, a court may reasonably infer that the State has "clearly articulated and affirmatively expressed" in state law, *Hallie*, 471 U.S. at 38-39 (citations omitted), its intent "to displace competition in a particular field," *Southern Motor Carriers*, 471 U.S. at 64. But when a State simply grants general corporate powers whose exercise does not inherently restrict competition, the most foreseeable result is that the recipient will exercise those powers in conformity with the background rules that bind simi-

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Decisions such as *Boulder* make clear that authorization in the first sense alone is insufficient.

1A Areeda & Hovenkamp ¶ 225a, at 131 (internal quotation marks and footnotes omitted).

larly situated private actors, and there is consequently no basis for inferring an intent on the State's part to displace competition. See pp. 32-33, 34, *supra*. That approach preserves the full scope of federal competition law and reserves the state action doctrine for circumstances in which anticompetitive conduct is the natural and expected (and thus, presumably, intended) consequence of the State's regulatory choices. It also respects the Court's admonition that state neutrality is *not* sufficient to displace the federal competition laws. *Boulder*, 455 U.S. at 55; *Cantor*, 428 U.S. at 585.

The state action doctrine is intended "to foster and preserve the federal system," *Ticor*, 504 U.S. at 633, by allowing affirmative state policy choices to prevail even when they are inconsistent with the preference for free-market competition reflected in the federal antitrust laws. When a State authorizes a specific class of inherently anticompetitive conduct, application of federal antitrust law to the authorized activities can be expected to subvert the State's regulatory regime. In *Omni Outdoor*, for example, it would have made no sense to say that South Carolina municipalities could continue to engage in zoning so long as they did so without impairing free-market competition, since "[t]he very purpose of zoning regulation is to displace unfettered business freedom." 499 U.S. at 373. Application of the state action doctrine in that case thus vindicated a state policy choice that was clearly implicit in the authorization to zone.

The understanding of "foreseeability" reflected in the decisions below, by contrast, "stand[s] federalism on its head."

general powers that are susceptible of anticompetitive

competitive, thereby supporting the inference that the State anticipated and endorsed such behavior as part of a policy to displace competition. By contrast, anticompetitive conduct is not (for these purposes) the "foreseeable" result of a broad, general grant of corporate powers, since "[a] State that allows its municipalities to do as they please can hardly be said to have 'contemplated' the specific anticompetitive actions" that ultimately occur. *Boulder*

A. The Transaction At Issue Here Creates A Private Monopoly That Must Be Actively Supervised If It Is To Be Shielded By The State Action Doctrine

1. As detailed in the complaint and summarized above, the substance of the present transaction is that private parties arranged for PPHS to acquire a private monopoly by using the Authority as a conduit. See J.A. 28-66; pp. 11-13, *supra*. More than 20 years ago, the Authority ceded economic and operational control of all hospital affairs to PPHS, a private corporation. J.A. 38, 40-41. Under the terms of the 1990 lease of Memorial to PPMH, it is PPHS—not the Authority—that controls Memorial's assets and operations, including control of Memorial's revenues, expenditures, salaries, prices, contract negotiations with health insurance companies, available services, and other matters of competitive significance. J.A. 41; see J.A. 88-89 (lease term giving PPMH "total control over the establishment of all rates and charges," subject only to the lease). The transaction at issue here will likewise give PPHS full economic and operational control over its rival, Palmyra, and hence a presumptive monopoly over acute-care hospital services in the Albany area for the next 40 years. J.A. 30, 49.

Although the Authority created PPMH and PPHS to provide health care to the residents of Dougherty County, see J.A. 76, and retains ownership of Memorial's assets, PPHS and PPMH are private entities that operate independently of the Authority. See J.A. 108 (lease term stating that "no provisions in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship between Transferor and Transferor [sic] other than the relationship of landlord and tenant"). PPHS's CEO has declared, in denying requests under Georgia's open records law for the

board-meeting minutes of PPHS and PPMH, that "[e]ach of the Phoebe Putney entities is a private corporation and is neither affiliated with nor controlled by the

the profit from the nonprofit sectors of the American economy. There are nonprofit hospitals and for-profit hospitals, nonprofit colleges and for-profit colleges * * * . When profit and nonprofit entities compete, they are driven by competition to become similar to each other." *Girl Scouts of Manitou Council, Inc.* v. *Girl Scouts of the United States, Inc.*, 646 F.3d 983, 987 (7th Cir. 2011) (Posner, J.). In particular,

> the absence of "profit" is no guarantee of eleemosynary intent or practice. Profit can appear not only in the form of dividends but also in the form of salaries and perquisites. Moreover, nonprofit organizations may be subject to the same incentives and temptations that for-profit firms are.
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> Indeed, the nonprofit hospital, including the publicly owned hospital, may have profit motives that are just as strong as those of the profit-making hospital.

1B Areeda & Hovenkamp ¶ 261a, at 166-167.

Second, respondents' claim of a unity of interest between the Authority and PPHS is untenable, since PPHS plainly has private interests distinct from those of the Authority. In addition to PPMH, PPHS has numerous other subsidiary affiliates—including for-profit

volvement, it sought to use the Authority as a “proven”

process. As detailed above, pp. 11-13, *supra*, PPHS conceived, structured, financed, and guaranteed the acquisition. It even pledged to pay HCA $17.5 million if the Authority did not approve the purchase agreement "in exactly the form" agreed to by PPHS and HCA. J.A. 163-164. PPHS took those steps without any input from, much less active supervision by, the Authority. Although the Authority was the nominal purchaser of Palmyra, its actual role in the transaction was akin to that of a notary public, certifying the formalities of the purchase but playing no part in fashioning its terms. As both courts below found (Pet. App. 10a n.11, 26a-32a), the sale-and-lease arrangement was in substance a single integrated transaction through which control over Palmyra was transferred from one private entity to another. Cf. *American Needle, Inc.* v. *National Football League*, 130 S. Ct. 2201, 2209 (2010) (noting a preference for "functional consideration of how the parties involved in the alleged anticompetitive conduct actually operate").

Second, there is no reasonable likelihood that any governmental entity acting on behalf of the State would sufficiently supervise PPHS's operation of Palmyra after the transfer of control of that hospital to PPHS has been completed. As the Authority's Chairman acknowledged, under the terms of the Memorial lease (which are substantially the terms that will apply to Palmyra), "the Authority really has no authority as far as running the hospital." J.A. 135; see J.A. 31-32. To be sure, the lease contains provisions ostensibly requiring PPHS to operate the hospital in conformance with the State's policy under the Hospital Authorities Law, and giving the Authority remedies for noncompliance. See J.A. 88-89 ("Transferee will fix rates and charges for services by

the Hospital * * * in accordance with the intent of and the policy established by the [Hospital Authorities Law].”); J.A. 102-108 (events of default and remedies). But “[t]he mere potential for state supervision is not an adequate substitute for a decision by the State.” *Ticor*, 504 U.S. at 638. Instead, active supervision “requires that state officials have *and exercise* power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy.” *Patrick*, 486 U.S. at 101 (emphasis added).

Neither the Authority nor any other governmental entity has undertaken to ensure that PPHS’s actions comport with the State’s policy. *Inter alia*, Georgia’s Hospital Authorities Law directs the Authority, in leasing a project for operation by others, to “ensure that the lessee will not in any event obtain more than a reasonable rate of return on its investment.” Ga. Code Ann. § 31-7-75(7). The statute further provides that no project of a hospital authority may charge prices greater than necessary to cover costs and create reasonable reserves. *Id.* § 31-7-77. Even assuming that those conditions could be implemented in a way that would supply the necessary supervision, that has not happened here. Despite serving one of the poorest counties in the Nation, PPMH amassed hundreds of millions of dollars in liquid reserves, and it paid its CEO more than $1.1 million in total compensation in fiscal year 2011 (see PPMH’s IRS Form 990 (Return of Organization Exempt From Income Tax) (2010), http://www.phoebeputney.com/media/file/About%20Us/PPMH_FY2011_990.pdf, at 7). Both the Authority’s chairman and vice-chairman testified that they were unaware of such basic and competitively salient financial matters as how PPMH’s prices compared to Palmyra’s, and wheth-

er prices at PPMH had risen in recent years. J.A. 178-180, 195. The Authority's vice-chairman further testified that the Authority has not reviewed what an appropriate level of reserves is for PPMH, that the Authority will continue to rely on PPHS to set reserves in the future, and that the Authority does not anticipate having any role in evaluating the prices PPHS charges or the rate of return PPHS receives in the future. J.A. 191-194.

Such passive acquiescence is insufficient to insulate private conduct from the federal competition laws. See *Ticor*, 504 U.S. at 638. As this Court stressed in *Midcal*, "[t]he national policy in favor of competition cannot be thwarted by casting such a gauzy cloak of state involvement over what is essentially a private [anticompetitive] arrangement." 445 U.S. at 106. The mere possibility that the Authority might someday play a more active role in overseeing PPHS is no reason to regard the transaction at issue here as anything but an unsupervised private merger to monopoly. See *Patrick*, 486 U.S. at 101.

Georgia law has not provided the oversight necessary to ensure that PPHS's acquisition of monopoly power will serve whatever purpose the State might have had in supposedly exempting certain hospital mergers from federal competition law. The State thus could not properly exempt the transaction at issue here from federal antitrust scrutiny, even if the relevant state laws clearly articulated the State's intent to take that step.

CONCLUSION

The judgment of the court of appeals should be reversed and the case remanded for further proceedings.

Respectfully submitted.

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General Counsel
JOHN F. D

APPENDIX

1. 15 U.S.C. 18 provides in pertinent part:

Acquisition by one corporation of stock of another

No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

* * * * *

2. 15 U.S.C. 21 provides in pertinent part:

Enforcement provisions

(a) Commission, Board, or Secretary authorized to enforce compliance

Authority to enforce compliance with sections 13, 14, 18, and 19 of this title by the persons respectively subject thereto is vested * * * in the Federal Trade Commission where applicable to all other character of commerce * * * .

* * * * *

3. 15 U.S.C. 53(b) provides in pertinent part:

False advertisements; injunctions and restraining orders

* * * * *

(b) Temporary restraining orders; preliminary injunctions

Whenever the Commission has reason to believe—

(1) that any person, partnership, or corporation is violating, or is about to violate, any provision of law enforced by the Federal Trade Commission,56.9nef5tra .9l9rshiptr. U9w{e38e—)

4. Ga. Code Ann. § 31-7-70 (2012) provides:

Short title.

This article shall be known and may be cited as the "Hospital Authorities Law."

5. Ga. Code Ann. § 31-7-71 (2012) provides:

Definitions.

As used in this article, the term:

(1) "Area of operation" means the area within the city or county activating an authority. Such term shall also mean any other city or county in which the authority wishes to operate, provided the governing authorities and the board of any hospital authorities of such city and county request or approve such operation.

(2) "Authority" or "hospital authority" means any public corporation created by this article.

(3) "Governing body" means the elected or duly appointed officials constituting the governing body of a city or county.

(4) "Participating units" or "participating subdivisions" means any two or more counties, or any two or more municipalities, or a combination of any county and any municipality acting together for the creation of an authority.

(5) "Project" includes the acquisition, construction, and equipping of hospitals, health care facilities, dormitories, office buildings, clinics, housing accommodations, nursing homes, rehabilitation centers,

extended care facilities, and other public health facilities for the use of patients and officers and employees of any institution under the supervision and control of any hospital authority or leased by the hospital authority for operation by others to promote the public health needs of the community and all utilities and facilities deemed by the authority necessary or convenient for the efficient operation thereof. Such term may also include any such institutions, utilities, and facilities located outside the city or county in which the authority is located, provided that the acquisition, construction, equipping, and operation thereof is requested or approved by the governing bodies of such city and county in which the project is located and by the board of any hospital authorities located within such city and county or provided that the acquisition, construction, equipping, and operation is to be located in the area of operation of the authority.

(6) "Resolution" means the resolution or ordinance to be adopted by governing bodies pursuant to which authorities are established.

and approval by resolution of the governing authority * * * .

* * * * *

(e) It is declared by the General Assembly of Georgia that in the exercise of the power specifically granted to them by this Code section, hospital authorities are acting pursuant to state policy and shall be immune from antitrust liability to the same degree and extent as enjoyed by the State of Georgia.

8. Ga. Code Ann. § 31-7-75 (2012) provides:

Functions and powers.

Every hospital authority shall be deemed to exercise public and essential governmental functions and shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including, but without limiting the generality of the foregoing, the following powers:

(1) To sue and be sued;

(2) To have a seal and alter the same;

(3) To make and execute contracts and other instruments necessary to exercise the powers of the authority;

(4) To acquire by purchase, lease, or otherwise and to operate projects;

(5) To construct, reconstruct, improve, alter, and repair projects;

(6) To sell to others, or to lease to others for any number of years up to a maximum of 40 years, any lands, buildings, structures, or facilities constituting all or any part of any existing or hereafter established project. In the event a hospital authority undertakes to sell a hospital facility, such authority shall, prior to the execution of a contract of sale, provide reasonable public notice of such sale and provide for a public hearing to receive comments from the public concerning such sale. This power shall be unaffected by the language set forth in paragraph (13) of this Code section or any implications arising therefrom unless grants of assistance have been received by the authority with respect to such lands, buildings, structures, or facilities, in which case approval in writing as set forth in paragraph (13) of this Code section shall be obtained prior to selling or leasing to others within 20 years after completion of construction;

(7) To lease for any number of years up to a maximum of 40 years for operation by others any project, provided that the authority shall have first determined that such lease will promote the public health needs of the community by making additional facilities available in the community or by lowering the cost of health care in the community and that the authority shall have retained sufficient control over any project so leased so as to ensure that the lessee will not in any event obtain more than a reasonable rate of return on its investment in the project, which reasonable rate of return, if and when realized by such lessee, shall not contravene in any way the mandate set forth in Code Section 31-7-77 specifying that

no authority shall operate or construct any project for profit. Any lessee shall agree in the lease to pay rent sufficient in each year to pay the principal of and the interest on any revenue anticipation certificates proposed to be issued to finance the cost of the construction or acquisition of any such project and to pay off or refinance, in whole or in part, any outstanding debt or obligation of the lessee (including any redemption or prepayment premium due thereon) which was incurred in connection with the acquisition and construction of facilities of such lessee and the amount necessary in the opinion of the authority to be paid each year into any reserve funds which the authority may deem advisable to be established in connection with the retirement of the proposed revenue anticipation certificates and the maintenance of the project. Any such lease shall further provide that the cost of all insurance with respect to the project and the cost of maintenance and repair thereof shall be borne by the lessee. In carrying out a refinancing plan with regard to any outstanding debt or obligation of the lessee which was incurred in connection with the acquisition and construction of facilities of such lessee, the authority may use proceeds of any revenue anticipation certificates i46 Tn1r[jeehef(jes-6.235 8d3010346 T

authority with respect to such project, in which case approval in writing as set forth in paragraph (13) of

and financing of a project as the authority may deem necessary or desirable;

(9) To acquire, accept, or retain equitable interests, security interests, or other interests in any property, real or personal, by mortgage, assignment, security agreement, pledge, conveyance, contract, lien, loan agreement, or other consensual transfer in order to secure the repayment of any moneys loaned or credit extended by the authority;

(10) To establish rates and charges for the services and use of the facilities of the authority;

(11) To accept gifts, grants, or devises of any property;

(12) To acquire by the exercise of the right of eminent domain any property essential to the purposes of the authority;

(13) To sell or lease within 20 years after the completion of construction of properties or facilities operated by the hospital authority where grants of financial assistance have been received from federal or state governments, after such action has first been approved by the department in writing;

(14) To exchange, transfer, assign, pledge, mortgage, or dispose of any real or personal property or interest therein;

(15) To mortgage, pledge, or assign any revenue, income, tolls, charges, or fees received by the authority;

(16) To issue revenue anticipation certificates or other evidences of indebtedness for the purpose of

providing funds to carry out the duties of the authority; provided, however, that the maturity of any such indebtedness shall not extend for more than 40 years;

(17) To borrow money for any corporate purpose;

(18) To appoint officers, agents, and employees;

(19) To make use of any facilities afforded by the federal government or any agency or instrumentality thereof;

(20) To receive, from the governing body of politi-

other entity or any group or groups of the foregoing; to enter into contracts alone or in conjunction with others to provide such services without regard to the location of the parties to such transactions; to receive management, consulting, and operating services including, but not limited to, administrative, operational, personnel, and maintenance services from another such hospital authority, hospital, health care facility, person, firm, corporation, or any other entity or any group or groups of the foregoing; and to enter into contracts alone or in conjunction with others to receive such services without regard to the location of the parties to such transactions;

(25) To provide financial assistance to individuals for the purpose of obtaining educational training in nursing or another health care field if such individuals are employed by, or are on an authorized leave of absence from, such authority or have committed to be employed by such authority upon completion of such educational training; to provide grants, scholarships, loans or other assistance to such individuals and to students and parents of students for programs of study in fields in which critical shortages exist in the authority's service area, whether or not they are employees of the authority; to provide for the assumption, purchase, or cancellation of repayment of any loans, together with interest and charges thereon, made for educational purposes to students, postgraduate trainees, or the parents of such students or postgraduate trainees who have completed a program of study in a field in which critical shortages exist in the authority's service area; and to provide services and financial assistance to private not for

profit organizations in the form of grants and loans, with or without interest and secured or unsecured at the discretion of such authority, for any purpose related to the provision of health or medical services or related social services to citizens;

(26) To exercise the same powers granted to joint authorities in subsection (f) of Code Section 31-7-72; and

(27) To form and operate, either directly or indirectly, one or more networks of hospitals, physicians, and other health care providers and to arrange for the provision of health care services through such networks; to contract, either directly or through such networks, with the Department of Community Health to provide services to Medicaid beneficiaries to provide health care services in an efficient and cost-effective manner on a prepaid, capitation, or other reimbursement basis; and to undertake other managed health care activities; provided, however, that for purposes of this paragraph only and notwithstanding the provisions of Code Section 33-3-3, as now or hereafter amended, a hospital authority shall be permitted to and shall comply with the requirements of Chapter 21 of Title 33 to the extent that such requirements apply to the activities undertaken by the hospital authority pursuant to this paragraph. No hospital authority, whether or not it exercises the powers authorized by this paragraph, shall be relieved of compliance with Article 4 of Chapter 18 of Title 50, relating to inspection of public records unless otherwise authorized by law. Any health care provider licensed under Chapter 30 of Title 43 shall be eligible to apply to become a participating pro-

vider under such a hospital plan or network which provides coverage for health care services which are

this declaration of policy and such as will produce revenues only in amounts sufficient, together with all other funds of the authority, to pay principal and interest on certificates and obligations of the authority, to provide for maintenance and operation of the project, and to create and maintain a reserve sufficient to meet principal and interest payments due on any certificates in any one year after the issuance thereof. The authority may provide reasonable reserves for the improvement, replacement, or expansion of its facilities or services.